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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Inquiry Concerning the Deployment of)
Advanced Telecommunications)
Capability to All Americans in a Reasonable)
And Timely Fashion, and Possible Steps)
To Accelerate Such Deployment)
Pursuant to Section 706 of the)
Telecommunications Act of 1996)

CC Docket No. 98-146

COMMENTS OF VERIO INC.

Verio Inc. ("Verio") hereby comments on the Commission's Notice of Inquiry in this proceeding released August 7, 1998.¹

Verio was incorporated in March 1996 to meet the growing needs of business customers for Internet access and related services. Verio has built a cohesive network of Internet service providers ("ISPs") through the phased acquisition and integration of existing, business-oriented ISPs in targeted geographic areas. Verio currently offers, through its ISP affiliates, turnkey business Internet solutions encompassing a wide range of Internet connectivity and enhanced Internet services.

Access to higher-bandwidth technologies, such as Digital Subscriber Line ("DSL") service, is especially important to the small and medium sized businesses that make up Verio's principal customer base. This market segment -- one of the fastest-growing in the

¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, FCC No. 98-187, Notice of Inquiry (rel. Aug. 7, 1998) ("NOI").

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Internet industry -- makes sophisticated and content-intensive use of the Internet, requiring more bandwidth than ordinarily can be supported by traditional copper pair circuits. Also, unlike typical dial-up Internet users, small and medium size business customers often require uninterrupted 24 hour Internet connectivity in order to support applications such as intranets, extranets and electronic commerce. These requirements make the "always on" character of DSL services especially attractive to this customer group.

Verio welcomes the Commission's decision to make a comprehensive inquiry into the conditions under which U.S. consumers can best enjoy the benefits of advanced telecommunications technologies and services. Verio also agrees with the Commission that market solutions are, in general, preferable to regulation as a means of encouraging the growth of advanced services.²

As the Commission recognizes, however, "most ISPs depend, for access to their retail customers, on the last mile facilities of others, especially LECs."³ The incumbent local exchange carriers' ("ILECs") control of these "last mile" facilities, together with the entry of those same carriers into the Internet services market, creates irresistible incentives for the ILECs to discriminate against competing ISPs. For example, at the same time that US West began offering its own xDSL Internet access service, that company withdrew the tariffs under which competing ISPs in seven states obtained inexpensive local loops that could be used to provide xDSL Internet access to the independent ISPs' customers.⁴

² NOI ¶ 5.

³ *Id.* ¶ 79.

⁴ See Opposition of Electric Lightwave, Inc., to Petition of U S West Communications, Inc., for Relief from Barriers to Deployment of Advanced Telecommunications Services 20-21 (filed April 3 1998 in CC Docket No. 98-26, *Petition of U S West Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services*); see also Janet Coursey, Lessons Learned in the LADS Tariff Proceedings in Colorado (Mar. 1998) <<http://www.boardwatch.com/mag/98/mar/bwm.72.html>> ("Coursey"). In the other seven states within the U S West region,

(Footnote continues on following page.)

Similarly, a number of ILECs have attempted to raise the costs of rival ISPs by refusing to pay reciprocal compensation to competing local exchange carriers for calls from ILEC customers to ISPs served by competing local exchange carriers ("CLECs") -- a practice that, if permitted, will force CLECs to raise their rates for service provided to independent ISPs. Although the state public utilities commissions have rejected many of these anticompetitive ILEC efforts,⁵ competing ISPs have been substantially injured, both by the ILECs' conduct and by the delay and cost of obtaining relief from that conduct.

Under these circumstances, the Commission should take at least two actions to ensure that ILECs do not use their control of bottleneck facilities to monopolize the Internet access market and delay the deployment of universal, economical, advanced telecommunications facilities and services. First, the Commission should reconfirm that the antidiscrimination principles of the Communications Act apply fully to the dealings of ILECs with their ISP customers, and that those requirements are violated when ILECs withdraw tariffs, deny reciprocal compensation or take other measures with the intention

(Footnote continued from previous page)

US West reportedly "rescinded its [withdrawal of the LADS tariffs] because of opposition." Coursey, *supra* at 1.

⁵ See, e.g., Arizona Corporation Commission, *Petition of MFS Communications Company, Inc. for Arbitration of Interconnection Rates, Terms and Conditions with U S West Communications, Inc., pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996*, Opinion and Order, Decision No. 59872, Arizona CC Docket Nos. U-2752-96-362 and E-1051-96-362 (Oct. 29, 1996); Colorado Public Utilities Commission, *Petition of MFS Communications Company, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with U S West Communications, Inc.*, Decision Regarding Petition for Arbitration, Decision No. C96-1185, Colorado PUC Docket No. 96A-287T (Nov. 5, 1996); Connecticut Department of Public Utility Control, *Petition of the Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Service Provider Traffic*, Final Decision, Connecticut DPUC Docket No. 97-05-22 (Sept. 17, 1997); Illinois Commerce Commission, *Teleport Communications Group, Inc. v. Illinois Bell Telephone Company, Ameritech Illinois: Complaint as to Dispute over a Contract Definition*, Opinion and Order, Illinois CC Docket No. 97-0404 (Mar. 11, 1998).

and effect of inhibiting competition in the Internet access market.⁶ Second, the Commission should confirm that ISPs, no less than CLECs, are entitled to obtain access to local loops suitable for high-speed Internet access services.

ISP access to high-speed local facilities is essential to the deployment of xDSL and other advanced Internet services. As the Commission has ruled, under the Telecommunications Act of 1996, CLECs may obtain access to local loops suitable for xDSL and other high-speed digital services.⁷ This requirement, however, only extends the range of potential competitors in the DSL market to ILECs and CLECs -- an artificial constraint that limits consumer choice (especially in rural areas not served by CLECs) and inflates end users' cost of obtaining high-speed access to the Internet. In order to extend the benefits of these services to a wider range of consumers at reasonable cost, the Commission should declare that ILECs must provide ISPs with nondiscriminatory access to high-speed data facilities for use in providing Internet access services.

In requiring ILECs to furnish ISPs with local loops suitable for high-speed digital services, the Commission should not require ISPs to secure CLEC status, which may impose regulatory and service costs that do not properly apply to ISPs and must be passed on to the ISPs' end users. The eligibility of ISPs to obtain unbundled ILEC network elements should be established, not by classifying ISPs as telecommunications carriers for

⁶ In this connection, Verio already has encountered substantial, ongoing difficulty with the quality and timeliness of ILEC provisioning of services needed by Verio to provide Internet access services. Notably, ILECs have delayed providing information concerning high-speed ILEC data services that Verio needed to obtain in order to compete with the ILECs' own ISP services. Also, the ILECs with which Verio deals have shown a consistent inability to predict and communicate circuit installation schedules, render accurate invoices or provide stable points of contact for account management and installations. All of these problems result in increased costs for Verio and dissatisfaction among Verio's customers.

⁷ 47 U.S.C. § 251(c); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 et al., FCC No. 98-188, Memorandum Opinion and Order and Notice of Proposed Rulemaking ¶¶ 52-58 (rel Aug. 7, 1998) ("Advanced Services NPRM").

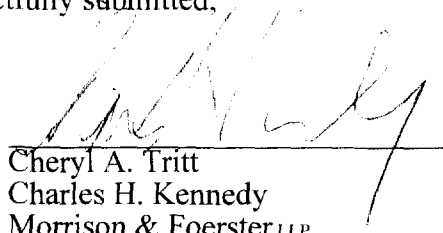
purposes of section 251(c) of the Telecommunications Act of 1996, but through exercise of the Commission's rulemaking authority pursuant to the pending Advanced Services rulemaking⁸ or the *Computer III Further Remand* proceeding.⁹

By requiring incumbent local exchange carriers to deal with their ISP competitors on a nondiscriminatory basis, including access to unbundled network elements needed to provide high-speed digital services, the Commission will help to ensure a competitive marketplace for high-speed Internet access. The result will be greater variety, higher performance and lower cost for users of Internet services in all areas of the United States.

Dated: September 14, 1998

Respectfully submitted,

By:


Cheryl A. Tritt
Charles H. Kennedy
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
Telephone: (202) 887-1500

Counsel to Verio Inc.

⁸ *Advanced Services NPRM, supra.*

⁹ *Computer III Further Remand Proceedings*, 13 FCC Rcd 6040 (1998) ("Further Notice of Proposed Rulemaking").

Certificate of Service

I, Kimberly E. Thomas, do hereby certify that the foregoing **COMMENTS OF Verio Inc.** were delivered, via hand delivery, on this 14th day of September, 1998, to the following:

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

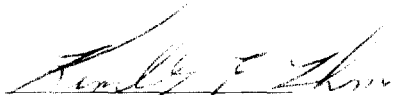
Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

John W. Berresford
Senior Antitrust Attorney
Industry Analysis Division
Common Carrier Bureau
Federal Communications Commission
2033 M Street, N.W., Room 500
Washington, D.C. 20554


Kimberly E. Thomas